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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 08, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUGH ALLEN RUSSELL II,

Defendant.

NO: 2:16-CR-0010-TOR

ORDER DENYING MOTION FOR
MODIFICATION OF SUPERVISED
RELEASE

BEFORE THE COURT is Defendant's *pro se* Motion to Modify supervised Release Conditions. ECF No. 65. This matter was noted for hearing without oral argument on April 4, 2024, but there is no reason to delay a ruling.

On December 7, 2016, Defendant appeared before the Court and was sentenced based on his plea of guilty to Count 2 of the Indictment charging Defendant with Receipt of Child Pornography in violation of 18 U.S.C. 2252A(a)(2). The Court ordered 15 years of incarceration to be followed by 15-years of supervised release. ECF No. 56. This was a substantial variance from the

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1 advisory guideline range of 262-327 months of incarceration based on a total
2 offense level 37 and a criminal history category III. The statutory penalty for this
3 offense was not less than 15 years nor more than 40 years imprisonment. *See* 18
4 U.S.C. § 2252A(b)(1).

5 Defendant now complains that his term of supervised release should be not
6 more than 3-years and that his conditions of supervised release are excessive.

7 DISCUSSION

8 First, Defendant is wrong that his supervised release should only be 3-years.
9 Pursuant to 18 U.S.C. § 3583(k), the statutorily authorized term of supervised
10 release for the crime Defendant committed is “any term of years, not less than 5, or
11 life.”

12 Title 18 U.S.C. § 3583(e) governs modification of conditions of supervised
13 release. Pursuant to § 3583(e),

14 The court may, after considering the factors set forth in section
15 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and
(a)(7)—

* * *

16 (2) extend a term of supervised release if less than the maximum
17 authorized term was previously imposed, and may modify, reduce, or
18 enlarge the conditions of supervised release, at any time prior to the
19 expiration or termination of the term of supervised release, pursuant to
the provisions of the Federal Rules of Criminal Procedure relating to
the modification of probation and the provisions applicable to the
initial setting of the terms and conditions of post-release supervision;

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1 18 U.S.C. § 3583(e)(1). Federal Rules of Criminal Procedure 32.1(c) governs
2 modification of supervised release.

3 Defendant complains that the Court did not follow the special conditions
4 consistent with the policy statements issued by the Sentencing Commission. ECF
5 No. 65 at 1. Defendant complains that there are two definitions of sex offense
6 in the Sentencing Manual. Defendant uses the definition in U.S.S.G. § 4B1.5
7 Repeat and Dangerous Sex Offender Against Minors, which is not applicable to
8 Defendant's guideline calculation. Defendant then compares that definition with
9 the one used in U.S.S.G. § 5D1.2 Term of Supervised Release. This definition
10 includes the statute for which Defendant was convicted and applies to his case.

11 The Court fully considered the factors set forth in § 3583(e), when it
12 imposed the terms and conditions of supervised release in this case. This Court has
13 also, again, considered those factors. Nothing the Court imposed is excessive or
14 beyond what should have been imposed in this case.

15 Accordingly, the Court will deny the motion for modification of the terms of
16 supervised release.

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1 **ACCORDINGLY, IT IS ORDERED:**

2 Defendant's pro se Motion to Modify supervised Release Conditions, ECF
3 No. 65, is **DENIED**.

4 The District Court Clerk is directed to enter this Order and provide copies to
5 the parties, including: Hugh Allen Russell II, # 19750-085, Englewood Federal
6 Correctional Institution (L East), 9595 West Quincy Avenue, Littleton, CO 80123.

7 **DATED** March 8, 2024.



8 A handwritten signature in blue ink that reads "Thomas O. Rice".
9 THOMAS O. RICE
10 United States District Judge

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